IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1903 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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PRAKASH JAGDISHCHANDRA PAREKH

Versus

STATE OF GUJARAT

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Appearance:

MR AS SUPEHIA for Petitioner No. 1

MS HARSHA DEVANI, AGP for Respondents No. 1-2

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CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 25/02/2002

ORAL JUDGEMENT

#. Rule returnable today. Ms.Harsha Devani, AGP waives service of rule on behalf of the respondents. With the consent of the parties, the matter is taken up for final hearing.

#. The father of the petitioner was serving as Senior Clerk in the Narmada Water Resources and Water Supply

Department. He died on 21.5.1999 while he was in service. The petitioner, thereafter, applied for compassionate appointment on 17.11.1999. However, his request was turned down by order dated 26.4.2000 on the ground that the family of the deceased is getting the income more than the prescribed limit.

#. It seems that, while taking the decision, pensionary income of the family of the deceased is also taken into consideration because in view of the certificate at page 16 family of the deceased is getting Rs.2500/- by way of pension. As per the certificate at page 17, there is no other income except the pensionary income. However, in view of various judgments of this Court, one of such judgment is produced at page 18 of this petition, while deciding the question of quantum, pensionary income is not required to be taken into consideration. In that view of the matter, the matter is required to be sent back to the authority. Accordingly, the matter is remanded to the authority again for fresh decision. While taking the decision, the authority may not take into consideration the pensionary income which the family of the deceased is getting. It is open for the authority to take into consideration all the other factors except the pensionary income. Such decision may be taken by the authority within a period of three months from the date of receipt of the writ of this Court.

#. In view of what is stated above, the petition is partly allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

(P.B.Majmudar,J)
(pathan)